

201505032
Victor Yupa

On June 11, 2015, after two people crossed a street in the Bronx, a police officer stopped them, accused them of carrying marijuana, frisked, and then searched them. No drugs were found on either of the people, and one was arrested for resisting arrest and obstructing governmental administration, and given a summons for jaywalking.

The officer who conducted the stop stated that he had only ever meant to stop the couple for jaywalking, and that he arrested and searched them when they refused to provide identification. The other officers on the scene all stated that the officer who stopped the couple told the other officers that he had observed them smoking marijuana before the stop.

A bystander recorded much of the encounter, including officers asking about drugs and cursing at the two.

PO Victor Yupa testified at his CCRB interview that he had no interaction with the couple or the officers arresting them because he was monitoring the person recording the incident to be sure that person did not interfere with the arrest. The recording itself shows that PO Yupa interacting with the officers and the person being arrested substantially before turning his attention to the person recording.

The CCRB found that the original officer had conducted an illegal frisk, an improper stop, an illegal search, and had arrested the two in retaliation. It also found that PO Yupa had made a false official statement in his CCRB interview.

The NYPD penalized the officer who conducted the arrest by issuing formalized training and did not punish PO Yupa.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rebecca Jacobson	Team: Squad #14	CCRB Case #: 201505032	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/11/2015 6:45 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 12/11/2016	EO SOL 12/11/2016	
Date/Time CV Reported Thu, 06/11/2015 6:54 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 06/19/2015 1:56 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Ian Gallagher	31919	§ 87(2)(b)	PBBX
2. An officer			Unknown
3. POM Josue Vassallo	23741	§ 87(2)(b)	PBBX
4. POM Victor Yupa	23804	§ 87(2)(b)	PBBX
5. Officers			PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joshua Healy	24570	§ 87(2)(b)	PBBX
2. POM Rahmaan Wiltshire	27481	§ 87(2)(b)	PBBX

Officer(s)	Allegation	Investigator Recommendation
A . POM Ian Gallagher	Abuse of Authority: PO Ian Gallagher stopped § 87(2)(b) .	A . § 87(2)(g)
B . POM Ian Gallagher	Abuse of Authority: PO Ian Gallagher frisked § 87(2)(b) .	B . § 87(2)(g)
C . POM Ian Gallagher	Abuse of Authority: PO Ian Gallagher searched § 87(2)(b) .	C . § 87(2)(g)
D . POM Ian Gallagher	Abuse of Authority: PO Ian Gallagher refused to provide his shield number to § 87(2)(b) .	D . § 87(2)(g)
E . POM Josue Vassallo	Discourtesy: PO Josue Vassallo spoke discourteously to § 87(2)(b) .	E . § 87(2)(g)
F . Officers	Force: Officers used physical force against § 87(2)(b) .	F . § 87(2)(g)
G . Officers	Abuse of Authority: Officers frisked § 87(2)(b) .	G . § 87(2)(g)
H . Officers	Abuse of Authority: Officers searched § 87(2)(b) .	H . § 87(2)(g)
I . An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) .	I . § 87(2)(g)
J . POM Ian Gallagher	Abuse of Authority: PO Ian Gallagher issued a summons to § 87(2)(b) .	J . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
K . POM Victor Yupa	Other: There is evidence suggesting PO Victor Yupa provided a false official statement in violation of PG 203-08.	K . § 87(2)(g) [REDACTED]

Case Summary

On June 11, 2015, § 87(2)(b) filed this complaint via telephone with IAB. On June 19, 2015, IAB forwarded this complaint to the CCRB via log number 2015-16997.

On June 11, 2015, at approximately 6:45 p.m., across the street from § 87(2)(b) in the Bronx, § 87(2)(b) was stopped, and subsequently frisked and searched by PO Ian Gallagher of Patrol Borough Bronx (**Allegations A, B, and C**). At the time, § 87(2)(b) was with his girlfriend, § 87(2)(b) and her cousin, § 87(2)(b) asked PO Gallagher for identification and PO Gallagher allegedly refused to provide it (**Allegation D**). § 87(2)(b) was recording the incident on her phone, during which PO Josue Vassallo of Patrol Borough Bronx told her, “I told you to record from over there, stand over there. Fucking surrounding us.” (**Allegation E**). § 87(2)(b) was then brought to the ground (**Allegation F**), where officers allegedly frisked and searched him (**Allegations G and H**). Additional officers, including plainclothes officers, responded to the scene. One of the plainclothes officers allegedly told § 87(2)(b) “Shut the fuck up, it’s understandable, I don’t give a fuck, whatever happens is what’s going to happen and we’re gonna take you to the precinct, that’s what we’re here for. We not trying to hear shit you’re saying.” (**Allegation I**). § 87(2)(b) was arrested as a result of the incident, charged with resisting arrest and obstructing governmental administration, and issued a summons for jaywalking (**Allegation J**). During the CCRB’s investigation of the allegations, it was determined that there is evidence suggesting PO Victor Yupa of Patrol Borough Bronx provided a false official statement to the CCRB regarding this incident (**Allegation K**).

The video recorded by § 87(2)(b) was provided to the CCRB by § 87(2)(b). It shows eight minutes of the officers’ interaction with § 87(2)(b) (BR 06). Two other short videos of the incident were obtained from § 87(2)(b) but both were from farther away and of very low quality.

Mediation, Civil and Criminal Histories

This case was not suitable for mediation due to § 87(2)(b)’s arrest (BR 01). As of November 17, 2015, § 87(2)(b) has not filed a notice of claim (BR 02). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) (BR 04). § 87(2)(b)
- This is the first CCRB complaint against PO Gallagher during his two year tenure.
- This is the first CCRB complaint against PO Vassallo during his two year tenure.
- This is the first CCRB complaint against PO Yupa during his two year tenure.

Potential Issues

The case was assigned to panel two months past the 90-day benchmark. The case was filed by complainant/witness, § 87(2)(b) who was deemed uncooperative after missing two scheduled appointments. Because the victim, § 87(2)(b) was incarcerated when the CCRB received

the complaint, his Legal Aid attorney, § 87(2)(b), was contacted prior to conducting an interview. During a conversation on June 23, 2015, § 87(2)(b) requested to be present during § 87(2)(b)'s CCRB interview, but she subsequently failed to cooperate with attempts to schedule an interview. Over the span of two months, the undersigned called § 87(2)(b) numerous times at both her personal and work phone numbers, contacted her supervisor at Legal Aid, and eventually was able to arrange an interview through a different Legal Aid attorney. However, this process resulted in significant delays to the investigation.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) alleged that once he was on the ground, he felt officers go through his pockets and pat him up and down. With the exception of the first officer who stopped him, § 87(2)(b) was unable to provide descriptions of any of the other uniformed officers involved in his incident and was unable to articulate how many or which of them were involved in going through his pockets and patting him down. Video footage does not show any specific officer frisking or searching § 87(2)(b) once he is on the ground. Therefore, **Allegations G and H** are pleaded against "Officers" from the 46th Precinct.

§ 87(2)(b) alleged that prior to being placed in a police car, a plainclothes officer cursed at him. § 87(2)(b) described four plainclothes officers on scene but could only describe them as white males. He said the officer who cursed was one of these plainclothes officers, but could not describe this officer further, except to say that the officer had a tattoo sleeve on his arm and was one of the officers who transported him to the stationhouse.

At the time of the incident, the 46th Precinct had 16 officers who may have been in plainclothes assignments. The Event Information lists an anticrime unit responding and transporting § 87(2)(b). However, these officers were ruled out as potential subjects because, contrary to § 87(2)(b) description, the anticrime team consisted of a white female, a Hispanic male, and two white males. The memo books of the two white males make no reference to this incident and their pedigree sheets do not list them as having any tattoos.

Video shows two plainclothes officers placing § 87(2)(b) into an unmarked vehicle that was identified by the investigation as being assigned to the 46th Precinct. It is likely that these officers were the ones transported § 87(2)(b) because the video also shows one of these officers about to get into the driver's seat of that car. However, they were also ruled out as potential subjects because the video shows that only one of them is white, and neither has tattoos on his arms.

All the officers who were interviewed denied that any officer made the alleged remarks to § 87(2)(b) and none of the officers who were interviewed had tattoos listed on their pedigree sheets. It is notable that video footage captures the period of time prior to § 87(2)(b) being placed in the unmarked vehicle and no profanity is captured.

It is evident that § 87(2)(b) descriptions of the plainclothes officers were not only vague, but also unreliable. He appears to have conflated the actions of multiple officers, and erroneously attributed the discourtesy allegation to both his transporting officer and to an unidentified officer with tattoos. It worth noting that much of the interaction between § 87(2)(b) and the plainclothes officers is captured on video and no profanity can be heard, raising the possibility that the allegation did not occur. Without more detailed or credible descriptions from § 87(2)(b) or any independent evidence, the investigation could not accurately narrow the field of potential officers or identify the subject from the officers determined to have been present.

Accordingly, **Allegation I** is pleaded against "An officer" from the 46th Precinct.

Allegations not pleaded

- Strip-search: § 87(2)(b) alleged that after PO Gallagher searched his waistline, he reached underneath his boxers and between his legs. Video footage of the incident shows that PO Gallagher only reaches into the waistband of § 87(2)(b)'s pants, but no further. Thus, a strip search has not been pleaded separately from the search allegation.
- Threat of force: § 87(2)(b) said an officer threatened to "mace" his girlfriend, § 87(2)(b). However, because § 87(2)(b) did not allege this, it has not been pleaded.
- Force: § 87(2)(b) said officers punched § 87(2)(b) inside the police car. However, because § 87(2)(b) did not allege this, it has not been pleaded.

Allegation A – Abuse of Authority: PO Ian Gallagher stopped § 87(2)(b)

It is undisputed that PO Gallagher stopped § 87(2)(b)

According to § 87(2)(b) he exited § 87(2)(b) and legally crossed the street with his girlfriend § 87(2)(b) and her cousin § 87(2)(b). When they reached the other side of the street, an officer, identified through investigation as PO Gallagher, grabbed his right shoulder, spun him around, and allegedly asked him for a blunt (BR 07).

According to § 87(2)(b) as she, § 87(2)(b) and § 87(2)(b) exited the park, she noticed six to seven officers standing along the exit of the park. As they exited, § 87(2)(b) told § 87(2)(b) the officers were looking at them. They crossed the street, § 87(2)(b) was unsure if they crossed legally or not, and § 87(2)(b) noticed the officers following them. Three to four officers approached § 87(2)(b) one officer grabbed his shoulder and pushed him against a wall, asked, "Where's the weed?" and told § 87(2)(b) he had been stopped for jaywalking (BR 08-09).

PO Gallagher said he stopped § 87(2)(b) for obstructing vehicular traffic, and denied stopping him for any other reason. Both the summons and the arrest report that PO Gallagher generated describe § 87(2)(b) as walking against a steady "Don't Walk" sign. PO Gallagher made no mention of this during his CCRB interview. He did not recall if he ever smelled or saw marijuana on § 87(2)(b). PO Gallagher said he observed § 87(2)(b) blocking cars on § 87(2)(b), but could not articulate any details of what he observed which led him to believe § 87(2)(b) was obstructing traffic. PO Gallagher was inside the park at the time of the observation, approximately 10 feet away from the intersection where § 87(2)(b) was. He could not recall if § 87(2)(b) was stationary or moving, where in the street he was standing, where in the street he first observed § 87(2)(b) if § 87(2)(b) was blocking one lane of traffic or two, how many cars he was blocking, or if the passengers of the cars responded in any way to being blocked. He did not recall how long he observed § 87(2)(b) and did not recall if he issued him any commands to get on the sidewalk. He decided to stop § 87(2)(b) with the intention to talk to him about blocking traffic and being in the street. He denied approaching § 87(2)(b) for any other reason (BR 14).

PO Vassallo, PO Yupa, and PO Wiltshire testified that § 87(2)(b) was stopped after PO Gallagher told them he observed § 87(2)(b) smoking marijuana. None of these officers observed § 87(2)(b) smoking marijuana or committing any other violation. § 87(2)(g) PO Yupa and PO Wiltshire said they were at the corner outside the park when § 87(2)(b) passed by them at a distance of 2-3 feet and PO Gallagher commented that § 87(2)(b) was smoking marijuana. Neither PO Yupa nor PO Wiltshire observed this. PO Vassallo said the officers were inside the park when PO Gallagher made the observation, from a distance of 20-30 feet. PO Vassallo did not observe § 87(2)(b) smoking or discarding a marijuana cigarette, but said he smelled marijuana. § 87(2)(g)

§ 87(2)(g) PO Healy testified that the officers were inside of the park when PO Gallagher said that § 87(2)(b) “looked like he was smoking marijuana,” gestured in his general direction, and then commented that § 87(2)(b) was jaywalking. PO Healy estimated the officers were 150-200 feet from § 87(2)(b) at the time. When PO Healy noticed § 87(2)(b) he was almost to the other side of the street, by the curb, and within the confines of the pedestrian walkway. PO Healy did not observe either of the violations PO Gallagher referenced (BR 10-13).

In video obtained by the investigation, officers are heard making statements about marijuana to § 87(2)(b) and § 87(2)(b) is heard denying having marijuana (BR 26-27).



2015-11-18_12-11-22.mp4



2015-11-18_12-16-30.mp4

A stop requires reasonable suspicion that the individual being stopped has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (BR 15)

§ 87(2)(g) PO Gallagher said the sole reason for the stop was § 87(2)(b) blocking vehicular traffic. § 87(2)(g)

three of the four other officers said the sole reason for the stop was that PO Gallagher had observed § 87(2)(b)'s smoking marijuana. However, none of these officers actually observed § 87(2)(b) smoking marijuana themselves, and PO Gallagher denied that the stop was for marijuana. § 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: PO Ian Gallagher frisked § 87(2)(b)

§ 87(2)(b) said that while he was against the wall, PO Gallagher frisked him, patting down his chest, waist, and legs. § 87(2)(b) first testified that PO Gallagher asked permission to search him. However, § 87(2)(b) later testified that he had told PO Gallagher that the officer could frisk him, without the officer ever asking permission.

PO Gallagher originally denied frisking § 87(2)(b). He expressed a clear misunderstanding of what constituted a frisk and a search, initially referring to the action of patting down § 87(2)(b)'s pockets as a search, before ceding that his actions had constituted a frisk.

It is well-established that a warrantless search is permissible if conducted on the basis of consent. If consent is freely given, it makes no difference that an officer may have approached with the hope or expectation of obtaining consent. Kentucky v. King, 131 S. Ct. 1849 (2011) (BR 29)

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Ian Gallagher searched § 87(2)(b)

Although § 87(2)(b) acknowledged consenting to the frisk, he said he specifically told the officers he did not consent to being searched. Nonetheless, according to § 87(2)(b) PO Gallagher searched him by making him take off his shoes, reaching into both of his pants pockets on three separate occasions, and feeling inside the waistline of his pants. According to § 87(2)(b) the officers searched his pockets and took everything he had out of his pockets.

Video (BR 16) shows § 87(2)(b) standing against a fence. He can be heard telling the officers that they cannot search him. Video shows PO Gallagher reach his hand into § 87(2)(b)'s right pants pocket (BR 32). Following this, § 87(2)(b) again objects to being searched, and moves away from the fence. At this point, the officers place him back against the fence and an officer tells him to put his hands behind his back. Video then shows PO Gallagher reach into § 87(2)(b)'s other pants pocket and shows him pull open the waistband on § 87(2)(b)'s pants. § 87(2)(b) is not handcuffed during this time. BR 16:



2015-11-17_18-33-56.mp4

As noted above, PO Gallagher demonstrated a misunderstanding of the terms frisk and search and confusion about which actions he performed; however, he did admit to searching § 87(2)(b). He did not recall if he noticed any bulges on § 87(2)(b) and when asked if he had suspected § 87(2)(b) of having a weapon, he replied, “I don’t know who does and who doesn’t have a weapon.” PO Gallagher explained that he searched § 87(2)(b) for weapons prior to § 87(2)(b) being placed in the police vehicle. PO Gallagher said § 87(2)(b) was handcuffed during the time that he was searched. PO Gallagher could not recall what areas of § 87(2)(b)'s body he searched. PO Gallagher viewed the video and identified himself. PO Vassallo, PO Yupa, PO Wiltshire, and PO Healy all denied or did not remember § 87(2)(b) being frisked or searched. These officers did not mention anything about § 87(2)(b) that made them suspicious or fear for their safety.

§ 87(2)(b) was issued a summons for jaywalking. He was also charged with resisting arrest and obstructing governmental administration. (PO Gallagher also claimed that § 87(2)(b) pushed PO Vassallo during the incident; however, neither PO Vassallo nor any other officer referenced PO Vassallo being pushed, even when PO Vassallo was questioned directly about what physical contact he had with § 87(2)(b)).

An officer must have reasonable suspicion that a suspect is armed to conduct a frisk and probable cause to search them. (*People v. DeBour*, 40 N.Y.2d 210 (N.Y.S. Ct. Of Appeals 1976)) (BR 15). When an arrest has been effected, the arresting officer should immediately field search/frisk the prisoner for weapons, evidence, and/or contraband. (NYPD Patrol Guide Procedure 208-03) (BR 18). The fact that the search precedes the formal arrest is irrelevant as long as the search and arrest are nearly simultaneous so as to constitute one event. (*People v. Reid*, 24 N.Y.3d 615 (2014)) (BR 31)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) He initially testified that § 87(2)(b) was searched only after he was handcuffed, § 87(2)(g). PO Gallagher later testified that § 87(2)(b) was considered under arrest as early as 35 seconds into the above video (2015-11-17-18-33-56.mp4); however, § 87(2)(b) was not handcuffed for another two and a half minutes. PO Gallagher said § 87(2)(b) remained un-handcuffed because he “tensed up against the fence,” but video evidence shows no effort by the officers to handcuff § 87(2)(b) prior to the first search. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D - Abuse of Authority: PO Ian Gallagher refused to provide his name and shield number to § 87(2)(b)

According to § 87(2)(b) he asked PO Gallagher for three forms of identification to show that he was an officer. PO Gallagher allegedly responded to him that this was something that he did not have to show § 87(2)(b) and something officers only do on the Internet.

PO Gallagher did not remember § 87(2)(b) asking for his name or shield number, but recalled § 87(2)(b) screaming all the officers’ names and shield numbers. PO Gallagher did not recall § 87(2)(b) asking other officers to provide their IDs, names, or shield numbers and he did not recall if he ever verbally provided this information. PO Vassallo did not know if § 87(2)(b) asked for officers’ shield numbers and never heard any officer refuse to provide it. PO Yupa did not recall if § 87(2)(b) ever asked any officers for their IDs. PO Wiltshire said § 87(2)(b) never asked for any IDs, shield numbers, or names. PO Healy did not recall § 87(2)(b) asking for any officers’ IDs, names, or badge numbers.

Video footage shows § 87(2)(b) calling out the shield numbers of the officers in his immediate vicinity, including PO Gallagher's shield number. Approximately a minute and a half later, § 87(2)(b) asks PO Gallagher, "Do you have identification? What's your number? Why are you holding your badge?" PO Gallagher responds, "Because you already said it several times." It is notable that near the time § 87(2)(b) accuses PO Gallagher of "holding" his badge, the video shows PO Gallagher with both hands on his chest, holding the straps of his vest and taking no actions to obscure his shield (BR 19).



2015-11-17_18-42-31.mp4

Patrol Guide Procedure 203-09 requires officers to state their rank, name, shield number, and command, or otherwise provide this information to anyone who requests it (BR 20).

Although § 87(2)(b) requested "identification" from PO Gallagher, officers have no obligation to show their ID cards to civilians. Furthermore, § 87(2)(b) follow-up question of "What's your number?" suggests that the specific identifying information he wanted was PO Gallagher's shield number. § 87(2)(g)

Furthermore, by the time of his request, he not only already had PO Gallagher's shield number, but had made PO Gallagher aware of the fact that he had this information by saying it out loud. When PO Gallagher told § 87(2)(b) "You already said it several times," the officer provided an affirmative response to the request. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Discourtesy: PO Josue Vassallo spoke discourteously to § 87(2)(b)

It is undisputed that PO Vassallo used discourtesy while addressing § 87(2)(b) which he admitted to after identifying himself speaking discourteously on video.

During video of the incident, PO Vassallo can be heard saying to § 87(2)(b) "Ma'am, I told you to record from over there, stand over there. Fucking surrounding us." PO Vassallo stated that he spoke in this manner because § 87(2)(b) was not complying with his instructions and kept getting closer and closer. He said he used the word for his safety because he was not getting across being courteous and respectful. According to PO Vassallo, even after speaking in this fashion, he was not successful in getting § 87(2)(b) to comply with his orders (BR 21).



2015-11-17_18-45-43.mp4

Patrol Guide section 203-09 (BR 20) states that officers must be courteous and respectful when dealing with members of the public. Even when officers are confronted with civilians that are hostile, defiant, or provocative in manner, they are still required to maintain certain decorum and professionalism in their conduct. Police Department v. Teeter OATH Index No. 590/01 (BR 22)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) alleged that officers “dropped” him to the ground. He explained that officers put pressure on the back of his knees, which forced him to the ground. He was subsequently arrested.

§ 87(2)(b) arrest paperwork indicates that he was arrested for resisting arrest. The officers were generally consistent that § 87(2)(b) resisted being handcuffed and flailed his arms. PO Vassallo also recalled that § 87(2)(b) was pushing, shoving, kicking and flaying. The interviewed officers did not recall exactly how § 87(2)(b) got to the ground, with the exception of PO Gallagher, who recalled that § 87(2)(b) went to the ground voluntarily. Video footage does not show § 87(2)(b) going to the ground or any force used to get him to the ground. It does show him audibly upset prior to going to the ground, and it shows him after he is on the ground.

Patrol Guide section 203-11 states that only the amount of force necessary to overcome resistance will be used to effect an arrest. (BR 33)

§ 87(2)(g)

Allegation G – Abuse of Authority: Officers frisked § 87(2)(b)

Allegation H – Abuse of Authority: Officers searched § 87(2)(b)

Allegation I – Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that once he was on the ground, he felt officers go through his pockets and pat him up and down. § 87(2)(b) also alleged that prior to being placed in a police car, an officer cursed at him.

As discussed above in the Officer Identification section, § 87(2)(b) could not articulate which or how many of the officers were involved in frisking and searching him while he was on the ground and video does not show any specific officer frisking or searching him on the ground.

§ 87(2)(g)

§ 87(2)(g)

Allegation J – Abuse of Authority: PO Ian Gallagher issued a summons to § 87(2)(b)

It is undisputed that PO Gallagher issued § 87(2)(b) a summons for violation of traffic rule 4-03, section C, subsection 3 – crossing against a steady “Don’t Walk” sign. PO Gallagher wrote in the narrative, “At TPO A/O observed Deft. Walk against a steady ‘Don’t Walk’ sign blocking vehicular traffic.” (BR 23) Neither § 87(2)(b) nor § 87(2)(b) were summonsed or arrested.

In PO Gallagher’s CCRB testimony, he did not describe seeing § 87(2)(b) cross the street against the intersection’s pedestrian control signals. Instead, he said he saw § 87(2)(b) and two females obstruct traffic on § 87(2)(b) by blocking cars. However, he was unable to provide any details of what he observed that led him to conclude they were obstructing traffic. He could not recall if they were stationary or moving, where in the street they were standing, if they were blocking one lane or two, if all three of them were blocking traffic, if he observed them doing anything beyond being in the street, how many cars they were blocking, if the cars responded to being blocked in any fashion, or if the individuals were saying anything to the passengers of the cars. Initially, PO Gallagher could not recall from what distance he made the observation or for how long he observed them, but PO Gallagher then approximated that he was standing 10 feet away and observing them for 30 seconds. § 87(2)(g) PO Healy’s account that the officers were 150-200 feet away when PO Gallagher made the observation.

PO Gallagher’s descriptions of his observations were not corroborated by the other officers. To the contrary, PO Yupa, PO Wiltshire, and PO Vassallo did not recall or did not know if § 87(2)(b) crossed the street illegally and did not even recall PO Gallagher discussing jaywalking as a reason for the stop. PO Healy did recall PO Gallagher commenting that he had observed § 87(2)(b) jaywalking, but PO Healy did not personally observe this violation.

Department of Transportation traffic rules section 4-03 lists traffic signals and subsection (c) (3) lists “Steady DON’T WALK, red hand symbol or red standing figure” among the pedestrian control signals. (BR 24)

It is clear that § 87(2)(b) crossed the street prior to being stopped. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation K – Other: There is evidence suggesting PO Victor Yupa provided a false official statement in violation of PG 203-08.

The CCRB recommends that the NYPD conduct further investigation as there is evidence to suggest that PO Yupa provided a false official statement. The evidence is as follows:

During PO Yupa’s CCRB interview on October 20, 2015, he denied having knowledge of the conversation between the other officers and § 87(2)(b) immediately preceding the arrest, denied

knowing if § 87(2)(b) was physically compliant, and denied knowing if PO Gallagher had physical contact with § 87(2)(b). PO Yupa said he had no knowledge of these things because he was performing crowd control and had his back to § 87(2)(b) and the other officers. During the CCRB interview, Inv. Jacobson and PO Yupa had the following exchange.

[09:12]

Inv. Jacobson: After § 87(2)(b) says ‘I don’t have to give you the ID’ and is screaming, sort of, what is PO Gallagher’s response to him, how are you responding to this?

PO Yupa: I don’t know what he was doing. I was just dealing with the female filming because she immediately took her phone out.

Inv. Jacobson: How soon after § 87(2)(b) was stopped did she take out her phone?

PO Yupa: Immediately basically.

Inv. Jacobson: Was she interfering or was she just filming? What was she doing during this time?

PO Yupa: She was just filming. I was trying to keep her from interfering.

Inv. Jacobson: How close would you say she was to you?

PO Yupa: She was in my face, maybe a foot away, had the phone in my face the whole time.

Inv. Jacobson: And how far were you from PO Gallagher and § 87(2)(b)?

PO Yupa: They were behind me, probably like a foot away?

Inv. Jacobson: I understand you’re dealing with her, but do you hear any of the conversation between PO Gallagher and § 87(2)(b)?

PO Yupa: No.

Inv. Jacobson: Is § 87(2)(b) being physically compliant during this time?

PO Yupa: I don’t, I don’t, I’m dealing with the girl, my back’s towards them, I wouldn’t be able to tell you anything about that.

Inv. Jacobson: Did you see PO Gallagher have any physical contact with § 87(2)(b)?

PO Yupa: No.

Inv. Jacobson: How long is he interacting with him for?

PO Yupa: To tell you the truth, I don’t know. I’m dealing with the female, everything that is going on with them I don’t recall ‘cause my back is towards them, ya know? I’m dealing with the girl, trying to keep her back, trying to keep her back.

[11:28]

Inv. Jacobson: Do you ever see PO Gallagher frisk this gentleman or is there any conversation about a frisk occurring?

PO Yupa: No, I didn’t see anything. I was dealing with the female, the whole time.

Video footage of the incident shows PO Yupa facing § 87(2)(b) and the other officers as they interact. There is no evidence of PO Yupa performing crowd control until about 45 seconds into the video. Beginning at about one minute into the video, PO Yupa is again seen facing § 87(2)(b) and the other officers as they interact, before he then turns around towards the women and tells them to back up. PO Yupa viewed this footage and identified himself on screen (BR 25).



2015-11-17_18-48-52.mp4

According to Patrol Guide Procedure 203-08, the intentional making of a false official statement is prohibited and will be subject to disciplinary action. The statement must have been proven to

be made, material, and intentionally false. (Dep't Correction v. Centeno, OATH Index No. 2031/04 (2005)) (BR 30)

§ 87(2)(g)

At the time of his CCRB interview, abuse of authority allegations were pleaded against PO Yupa and the other officers on scene, creating the possibility that the officers would face discipline for their actions. § 87(2)(g)

§ 87(2)(g)

Squad: 14

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date